

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

ERNEST MERRILL, LILA MERRILL)

Plaintiffs,)

v.)

COUNTY OF MADERA, et al.,)

Defendants.)

COUNTY OF MADERA,)

Counter-Claimant,)

v.)

ERNEST MERRILL, HOFFMANN
RANCH, LLC., et al.,)

Counter-Defendants,)

CV F 05-0195 AWI SMS

ORDER GRANTING OF DISMISSAL
OF COUNTY OF MADERA'S
COUNTERCLAIMS AGAINST
HOFFMANN COMPANY LLC

On October 20, 2006, the parties filed a stipulation as to all counter claims by Counter-Claimant County of Madera against Counter-Defendant Hoffmann Company LLC, filed on September 24, 2005. This stipulation is made pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii). The notice is signed by the parties who have appeared in this case.

Rule 41(a)(1), in relevant part, reads:

an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action.

Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

Rule 41(a)(1)(ii) thus allows the parties to dismiss an action voluntarily, after service of an answer, by filing a written stipulation to dismiss signed by all of the parties who have appeared, although an oral stipulation in open court will also suffice. Carter v. Beverly Hills Sav. & Loan Asso., 884 F.2d 1186, 1191 (9th Cir. 1989); Eitel v. McCool, 782 F.2d 1470, 1472-73 (9th Cir. 1986). Because a stipulation for dismissal of Counter-Claimant County of Madera's counter claims against Counter-Defendant Hoffmann Company LLC has been filed and signed by all parties who have made an appearance, as required by Rule 41(a)(1)(ii), these claims have terminated.

Therefore, IT IS HEREBY ORDERED that the Clerk is ordered to dismiss Counter-Claimant County of Madera's counter claims against Counter-Defendant Hoffmann Company LLC in light of the filed and properly signed Rule 41(a)(1)(ii) Stipulation Of Dismissal With Prejudice.

IT IS SO ORDERED.

Dated: October 23, 2006
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/s/ Anthony W. Ishii
UNITED STATES DISTRICT JUDGE